IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

Letters Patent Appeal No. 281 of 06 with Letters Patent Appeals No. 282 of 06; 283 of 06; 284 of 06; 285 of 06 and 286 of 06.

Mr J.T. Gilda, Advocate for appellants.

Coram: V.C. Daga & A.B. Chaudhari,JJ

Dated: 20th November 2006

P.C.

1/ Heard. Perused appeal papers and also writ petitions.

2/ All these Letters Patent Appeals are

directed against judgment dated 7th September 2006 passed by the learned Single Judge of this Court in Writ Petition No. 2189 of 01; whereby the order passed by the Industrial Court, Nagpur dated 12th December 2000 in Revision (LPN) Nos. 217 of 2000 to 223 of 2000 came to be set aside and the order of the Labour Court came to be restored.

3/ The respondents-workers are different, but appellants are common facts and issues involved therein are identical. So this single order shall result in disposal of all these Letters Patent Appeals.

ISSUE

4/ The issue for consideration is :

Whether the impugned judgment suffers from

error of law warranting interference ?

FACTUAL MATRIX

5/ The factual matrix reveals that the respondents-employees who were in service of the appellants were terminated vide order dated 14th January, 1991. All of them were charge-sheeted and prosecuted under Section 85 (1) of the Bombay Prohibition Act. They were sentenced till rising of the Court and pay a fine of Rs. 60/- each.

6/ Being aggrieved by the order of termination, the respondents filed seven complaints bearing Complaint (ULP) Nos. 29 of 91 to 35 of 91 under the provisions of the Maharashtra Recognition

of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the "Unfair Labour Practice Act").

7/ In the above complaints, common Written statement was filed by the appellants on 5th September, 1991. The relevant pleadings necessary for consideration in these appeals read as under :-

> " *The respondents, therefore, crave indulgence of this Ho'ble Court for permitting them to prove in the Court the act of misconduct on the part of the complainant* or to prove the case on merits before this Hon'ble Court, in case it is found to be necessary to do so..."

The issues were framed on 12th September 1994. The evidence came to be recorded between 1994 to 98. Appellants closed their case and filed its closure pursis in all the complaints on 11th February, 1999 after examining one witness on their behalf. Consequently, the cases were posted for

final arguments.

8/ The appellants, after closing their evidence on 6.4.1999, filed one application before the Labour Court for framing and deciding preliminary issue regarding applicability of the Model Standing Order vis-a-vis the Maharashtra Civil Services (Discipline and Appeal) Rules. It was further prayed that if the Court held that the Model Standing Orders are applicable to the complaints, then opportunity be given to the appellants herein to prove case on merits by adducing evidence. The said application came to be rejected by the Labour Court by an order dated 7th August 2000.

9/ Being aggrieved by the above order, present appellants preferred revision before the

learned Industrial Court which came to be allowed an order dated 12th December 2000, and direction was issued to the Labour Court to frame and try preliminary issue with further direction to allow the appellants-employer to lead evidence to prove misconduct, if any, and to justify their action of dismissal of the complainants from service.

10/ The aforesaid order of the Industrial Court came to be set aside in the writ petition filed by the employees being Writ Petition No. 2189 of 2000 by the impugned judgment dated 7th September 2006.

11/ Being aggrieved by the aforesaid judgment and order of the learned Single Judge, present batch of Letters Patent Appeals is preferred by the appellants.

SUBMISSIONS

12/ Learned counsel for the appellants in these appeals took us through the factual matrix of the case and impugned judgment. He reiterated all the submissions which were advanced and considered by the learned Single Judge in a well-reasoned judgment.

13/ Learned counsel for the appellants canvassed solitary contention that it was open for the employer to seek opportunity to lead evidence to prove misconduct at any stage of the case, even after closure of evidence on merits, but before final arguments of the case are heard. In support of his submission, he pressed into service some of the Apex Court judgments in the case of Delhi Cloth and General Mills. Co. Ltd. v. Ludh Budh Singh reported in AIR 1972 SC 1031; M/s Bharat Forge Co.

Ltd vs. A.B. Zha reported in 1996 (2) CLR 345; Shankar Chakravarti v. Britannia Biscuit Co.Ltd. and anr reported in AIR 1979 SC 1652 and Neeta Kaplish v. Presiding officer, labour Court & anr reported in AIR 1999 SC 698 consideration of which finds place in the impugned judgment of the learned Single Judge. The learned Single Judge could not be persuaded to accept the submissions advanced by the appellants.

14/ The wide proposition canvassed before the learned Single Judge and sought to be reiterated before this Court to justify prayer for belated opportunity to prove misconduct after ten years of the institution of the cases, that too, after closure of evidence just before advancing final arguments, in our considered view, was rightly rejected by the learned Single Judge for the reasons recorded, the relevant part of which is

reproduced herein below :-

> "... The complainants led their evidence thereafter. The respondents led their evidence in the year 1999 and closed the evidence vide pursis dated 11.02.1999. Only thereafter, on 06.04.1999, the application which has been filed came to be allowed by the impugned order. I find that the applicants had ample opportunity after filing written statement, after 1994 after the issues were framed and thereafter when the evidence was led to prove the misconduct. Having slept over this right from 194, I find that it would not be in the interest of justice to permit the respondents to lead the evidence as they have failed to avail of the opportunity at the earliest. If the contention of the learned counsel for the respondents that only a prayer has to be made in the written statement for leading additional evidence and that such a prayer could be pressed into service at any stage of proceedings even after closing the evidence is to be accepted, in my opinion, it would amount to travesty of justice. A litigant who is aware of the riders imposed on his right by the judgment of the Apex Court cannot be permitted to step over his right for the period of almost a decade and then press the same in service. The very purpose for which the procedure has been prescribed in the judgment of Shambhu Nath Goyal's case is to

> avoid delay which may lead to wrecking the morale of the workman. If the contention of the learned Counsel for the respondents is to be accepted, the same would defeat the very purpose. This is also the view accepted in the judgment of the Constitution Bench delivered by the Hon'ble Justice Santosh Hegde on behalf of three learned Judges. In so far as the reliance placed on the observations in paragraph 3 of the judgment delivered by the Hon'ble Shri Shivraj V. Patil, the same will have to be considered by way of an exception. when a party makes out justifiable ground for permitting it to lead additional evidence at a belated stage, the learned Labour Court/Tribunal would not be prevented from permitting it. In the present case, I find that no such ground has been made out by the respondents so that their application could have been allowed."
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> **(Emphasis supplied)**

15/ We do not propose to deal with the cases relied upon by the learned counsel for appellants in detail since all those cases were considered and analysed by the learned Single Judge with whom we agree.

16/ The view taken by the learned Single Judge is in accordance with the law laid down by the Apex Court in the case of Delhi Cloth and General Mills. Co. Ltd. v. Ludh Budh Singh (supra) the relevant part of which (para 60) is as under :-

> "60. From the above decisions the following principles broadly emerge :
> (1) .... (4)
> (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been properly and the findings recorded therein are also proper."

17/ The above principle carved out from the above judgment has been reiterated by the Apex

Court from time to time and the said principle still holds good.

18/ Considered on the touchstone of the above principle, it will be clear from the factual matrix of the case that the opportunity to lead evidence to prove misconduct was sought at highly belated stage, as such it was rightly rejected by the Labour Court. However, it was erroneously set aside by the Industrial Court. In this view of the matter, no fault can be found with the view taken by the learned Single Judge who has restored the order of the Labour Court. The view taken by the learned Single Judge is a reasonable and possible view. No perversity or error of law in the order impugned could be seen or demonstrated by the appellants. Needless to mention that the above principle is required to be applied to each case depending upon facts and circumstances prevailing

therein.

19/ In the case at hand, if one turns to the pleadings extracted in paragraph 5 supra, it would be clear that without pressing for right to lead evidence to prove misconduct, appellants elected to justify their action of termination or removal of employees on merits and did not press for their right to prove misconduct.

20/ Under the doctrine of election, if two defences are available to defend the action, the party to whom the said options are available has the option to elect either of them or both simultaneously, one after another if the ambit and scope of two defences are essentially different. It is thus seen from the record of the case at hand that the employer never wanted to exercise option

to prove misconduct. Appellants, in our opinion, have elected to prove their action on merits, rather than proving the misconduct before the Labour Court. The appellants never elected to put their option into operation by insisting on their right to lead evidence to prove misconduct before the Labour Court, and proceeded on the belief that the act of accepting punishment imposed by the criminal Court and payment of fine pursuant thereto amounts to admission of the guilt on the part of employees and that it was not necessary for them to lead evidence to prove misconduct on the part of employees.

21/ In our considered opinion, it is thus clear that the appellants-employer never wanted to exercise their right to lead evidence to prove misconduct before the Labour Court.

22/ It is not uncommon that lot of defences are taken in the Written statement, but all of them are not pressed at the time of trial or final hearing. Some are pressed; some are waived; while some are abandoned. Considered from this angle, one has to conclude that when the evidence on merits was led and pursis closing evidence was filed by the employer, intention of the appellants-employer was not to exercise option to lead evidence and prove misconduct. The said right was waived and abandoned by them. However, it appears that at the belated stage, considering the quality of evidence of one witness on merits on second thought, application praying for framing of preliminary issue and permission to lead additional evidence was preferred, just before the commencement of final arguments in the case. The

prayer made was nothing but an after-thought. In this view of the matter, the learned Single Judge was perfectly justified in holding that the appellants were sleeping over their rights and that they were not entitled for the opportunity sought at such a belated stage.

23/ Before we part with the case, we must observe that in cases of this nature; where the provisions of the Unfair Labour practice Act are summery in nature (See CIPLA Ltd v. Maharashtra General Kamgar Union reported in 2001 (1) CLR 754) and give drastic remedies to the parties concerned, the parties are expected to be diligent, prompt and careful in exercise of their rights. They cannot be heard to say that they will sleep over their right and press the same into service as and when they desire. The workers cannot be forced to wait for

decades together for justice. In the instant case, the workers are clammering for justice right from the year 1991. Inspite of lapse of 15 years, the case is yet to travel beyond the stage of the Labour Court.

24/ At this stage, we place it on record that with a view to avoid reopening of evidence and to cut short the span of litigation, we offered to permit the appellants to file certified copy of the order of conviction and sentence passed by the Criminal Court and to rely thereon since the foundation of the order of termination is the said conviction leading to misconduct. However, learned counsel for appellants insisted for order on merits. hence this order.

25/ For the reasons stated hereinabove, we

have no option but to dismiss all these appeals.

26/ In the result, for the reasons stated herein, all these Letters Patent Appeals are dismissed in limine with no order as to costs.

Judge. Judge.

hsj